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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------------|
| 10/712,825 | 11/13/2003 | Mark D. Monica | IPE-1 | 8830 |
| 28581 | 7590 | 11/27/2007 | | |
| DUANE MORRIS LLP PO BOX 5203 PRINCETON, NJ 08543-5203 | | | EXAMINER PATEL, TAJASH D | |
| | | | ART UNIT 3765 | PAPER NUMBER |
| | | | MAIL DATE 11/27/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,825

Applicant(s)

MONICA, MARK D.

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,10,12-20,22,23,28-32,34-47,49,50,52,53,55-89,161-166 and 172 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1,3-5,10,12-20,22,23,28-32,34-47,49,50,52,53,55-89,161-166 and 172-174.

DETAILED ACTION

1. Applicant timely traversed the restriction (election) requirement in the reply filed on August 2, 2007. In view of such, the Applicant has cancelled claims 90-95, 97, 100-102, 104-115, 117-119, 122-124, 129-135 and 167-171.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-5, 10, 12-20, 22-23, 28-32, 34-47, 49-50, 52-53, 55-89, 161-166, and 172-174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell (US 6,295,654) in view of Monica (US 6,321,386). Farrell discloses a protective pad apparatus (10) for protecting the chest, back and shoulder that includes a shell assembly (40) having a cushioning laminated pad (20) being fastened thereto which allow air to flow therethrough as shown in figures 2 and 4. Further, the laminate includes an outer and inner fabric layers (24) which allows air to flow therethrough as shown in figure 2. In addition, the cushioning pad laminate includes at least two discrete impact absorbing foam layers (32), col. 3, line 53 – col. 4, line 11. Furthermore, the cushioning pad laminate can include discrete impact absorbing layers.

Also, the shell assembly (40) includes a plurality of discrete protector panels as shown in figure 4. Additionally, the shell assembly has first and second halves which move relative to one another, col. 5, lines 1-13. The protective pad is secured to the body by a belt strap (54). Further, the shell assembly being defined front, back and shoulder portions/panels each has a plurality of raised embossments thereon as shown in figure 4. However, Farrell does not show the pad having an outer fabric layer that reflects heat.

Monica discloses a protective pad having a shell assembly that allows air therethrough as shown in figure 10. Further, the pad can be laminated with an outer fabric layer that reflects heat, col. 4, line 61- col. 7, line 52.

It would have been obvious to one skilled in the art at the time the invention was made to provide the protective pad of Farrell with an outer fabric layer that reflects heat as taught by Monica in order to keep the wearer cool and comfortable or depending on the end use thereof.

With regard to claims 5, 12, 18, 20, 37, 39, 41, 45, 73, 101, it would have been obvious to one skilled in the art at the time the invention was made to form the outer fabric of Farrell when viewed with Monica form any desired material that was available at the device was made to make the device cost effective or as required for a particular application thereof. Further, it would have been obvious that the cushioning pad and shell assembly of Farrell in view of Monica can be made of any pigmented/dyed color in order to make the device decorative or as a matter of design choice.

Furthermore, it would have been obvious to one skilled in the art the the device of Farrell when viewed with Monica can be provided with multiple layers of impact absorbing material to absorb greater force of impact as required for a particular application thereof.

4. Claims 13-16, 23, 28-32, 34-35, 52- 54, and 75-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell in view of Monica and further in view of Bainbridge et al. (US 6,453,477). Farrell discloses the invention as set forth above except for showing the cushioning pad including a substrate that is made of foam beads that are fused where the beads contact.

Bainbridge et al. (hereinafter Bainbridge) discloses a cushioning pad (20) including foamed beads (22) that are fused together where the beads contact one another, col. 14, lines 30-67 and as shown in figures 30-32. Also, the pad is detachably secured to an shell assembly (54) by detachable snap fasteners (60) as shown in figure 25.

It would have been obvious to one skilled in the art at the time the invention was made to substitute one of the layers of the cushioning pad of Farrell when viewed with Moncia with a substrate that is made of foam beads that are fused where the beads contact as taught by Bainbridge as an alternative but equivalent means of absorbing force of impact as known in the art. Furthermore, it would have been obvious that impact cushioning material having different absorbing properties can be substituted for the layers of Farrell as required for a particular application thereof. Also, it would have been obvious that the shell assembly of Farrell in view

of Monica can be detachably secured to the pad by snap as taught by Bainbridge so that the shell is easily removed when not in use.

Response to Amendment

5. The election filed on August 2, 2007 and arguments and amendment filed on March 23, 2006 have been considered. In view of such, the pending claims are rejected over Farell '654 in view of Monica '386. The Applicant argues that Farell '654 does not show closed cell foam (32) in not air flowing as required by the claims. The examiner respectfully disagrees since the cushioning foam pad of Farell does allow air to flow therethrough as recited in the broad pending claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The examiner's supervisor Mr. Gary Welch can be reached at (571) 272-4996. The group fax number is (571) 273-8300

/Tejash Patel/
Tejash Patel
Primary Examiner
AU 3765

November 23, 2007